89-1168

Supreme Court, U.S.
FILED
DEC 18 1989
JOSEPH F. SPANIOL, JR.
CLERK

Civil Court Index No: 42513-85
County Clerk's No: 92089-87

SUPREME COURT OF THE UNITED STATES
TERM OF OCTOBER, 1989

FRANK A. VESEY
Petitioner-Appellant

- against -

MACY'S, HERALD SQUARE
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE CIVIL COURT OF THE CITY OF N.Y.
COUNTY OF NEW YORK

FRANK A. VESEY
Petitioner per Se
715 Park Ave.,NYC. 10021 Tel:212-628-6563

Attorney for Defendant
HERBERT M. HELLMAN
131 West 34th Street, NYC.10001
Tel: 212-560-3938

25pp

STATEMENT OF THE QUESTION PRESENTED

May a Judge of the Civil Court of a municipality disregard the Constitution of the United States and deny the right to a trial by Jury to a Petitioner?

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

FRANK A. VESEY
Plaintiff-Appellant

- against -

MACY'S, HERALD SQUARE
Defendant-Respondent

Civil Court No: 42513-85
County Clerk's No: 92089-87

PETITION FOR A WRIT OF CERTIORARI
TO THE CIVIL COURT OF THE CITY OF N.Y.,CO.
OF NEW YORK

THE UNDERSIGNED PLAINTIFF-APPELLANT PER SE, FRANK A. VESEY,hereby appeals to the Highest Court of the Land that a Writ of Certiorari be issued to the Cvil Court of the County of New York, to review the judgement of C.C.J. Leonard N. Cohen, entered and filed on August 25, 1986. This order is arbitrary, capricious and against the Constitution of the U.S.

OPINIONS BELOW.

Copy of this order and of the orders of the higher Courts are appended in Annex A.

STATEMENT OF JURISDICTION

Order of the Appellate Term was filed on July 21, 1987.

Order of the Appellate Division was filed on January 5, 1989.

Order of the New York Court of Appeals was filed on October 17, 1989.

Order of Federal Judge Thomas P. Griesa was dated on March 22, 1988.

Now Petitioner preys for a review by a Writ of Certiorari from the Supreme Court of the United States, 28 USCA Par.1257.

CONSTITUIONAL PROVISIONS INVOLVED

The VIIth Amendment of the Constiution is here quoted: "In Suits at Common Law, where the value of controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by any Court of the United States, than according to the rules of the Common Law."

STATEMENT OF THE FACTS

1. On February 18, 1985, Plaintiff purchased from Macy's 2 oriental rugs and paid the total of $8,133.75. This was the advertised sales price, representing a difference of 12,000.-Dollars between the sales price and the regular market price.
2. Delivery was promised by the sales contract between 4-8 weeks from the date of purchase. Plaintiff was told by the salesman, that of the two rugs the smaller one was in stock and available at any time, if Plaintiff, the purchaser, wanted it. After
3. about 4 weeks Plaintiff decided, that one rug was perhaps better, than none, so he telephoned Macy's, that he would like to have the smaller rug now. Plaintiff was told by a sales lady, who took his call, that the rug will be on the truck the following day.
4. Instead of delivery, the following day Plaintiff received a shocking telephone call frm Macy's. A Mr. Ehrentrue called and announced that delivery cannot be made for <u>at least</u> one year, the smaller rug also not being available.
5. Pursuant this telephone call plaintiff declared to this Mr. Ehrentrue, that naturally he cannot wait for the rugs indefinitely,

Macy's should cancel the purchase, pay back the money Plaintiff paid for the purchase, pay the difference between advertised sales price and regular market price, as well as interest on the money they collected on Plaintiff's money.

6. Macy's flatly denied any payments outside of refunding the purchase price. so Plaintiff filed an Indorsed Complaint with the Civil Court of the County of New York, in which Plaintiff clearly described his option under the UCC pertaining paragraph 2-713.
7. Plaintiff having had previous experiences with some Civil Court judges and knew that the only way he will have a chance under the law is a trial by jury. So Plaintiff demanded such a trial, paid the fees the Civil Court wanted for trial by jury and was ready for the selction a jurors.The permission for trial by jury was granted by C.C.J. Margaret Taylor.
8. Trial date was set several times.The attorney for Defendant always asked for more time, as he explained, to work out an acceptable agreement, a settlement to satisfy Plaintiff.
9. Finally, instead of a settlement, he started his demands. First answers to "First set of Interrogatory", then personal examin-

ination in his office at Macy's, lasting for several hours. He demanded information whether Plaintiff purchased any rugs after Macy's failed to deliver. Plaintiff refused this information, because in his opinion this was irrelevant and immaterial in this proceeding and was invasion of his privacy by Defendant.

10. But the Civil Court judges were of different opinion and ordered Dr. Vesey to divulge this information.
11. After the deposition now, the defendant made a motion for Summary Dismissal and C.C.J. Leonard N. Cohen granted this motion. Plaintiff protestations, that he wanted a trial by jury, not by motions and memorandums, got prmission of the Civil Court for a trial by jury, paid the fees demanded for a trial by jury-were of no avail.
12. L.N.Cohen said that he wanted to read the papers. Then he wrote a caprcious, arbitrary order, unlawful and unconstitutional, contrary to the facts and twisted with such obvious bias, that only those who did not <u>want</u> to recognise and see it, did not do so.
13. The higher Courts did not want to recognise and see it. They confirmed this outrageous and in addition denied "leave to appeal"!
14. Plaintiff knew that his labors and efforts will be an exercise in futility, but he had

to go through all the steps, lest his appeal to the Supreme Court of the U.S. will be rejected on the ground, that he did not exhoust all the opportunities where he could have obtained remedies under the Law.

REASONS FOR GRANTING THE WRIT

Violation of the VIIth Amendment and denying the right to a trial by jury is the ground on which Petitioner appeals to this Court. The Supreme Court of the United States will answer the Question Presented.

No public official is permitted to take office without swearing to uphold the Constitution. The Supreme Court of the United States does not permit anyone to present his case if he refuses to swear and affirm that he will uphold the Constitution and will abide by it. The President of the United States must swear to it, before he may become the President. The Chief Justice of this Supreme Court must swear to it. The Justices of the Supreme Court must swear to it. Is a Judge of the Civil Court of a municipality above it? All the State Courts of New York say, he is. What is the Supreme Court of the United States'answer to this?

CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner submits, that the order of C.C.J. Leonard N. Cohen be set aside and the action of Petitioner be replaced on the Calendar of the Civil Court of the City of New York, County of New York for a trial by Jury.

Respectfully submitted,

FRANK A. VESEY, M.D.
Petitioner per Se

STATE OF NEW YORK COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the seventeenth day of October, A.D. 1989

PRESENT, Hon. Sol Wachtler, Chief Judge, presiding.

1-12 Mo. No. 870

Frank A. Vesey,

Appellant

v.

Macy's, Herald Square,

Respondent

A motion for leave to appeal to the Court of Appeals in the above case having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation and due deliberation having been thereupon had, it is ORDERED, that the said motion be and the same hereby is dismissed upon the ground that this Court does no have the jurisdiction to entertain a motion for leave to appeal from the order of the Appellate Division entered in an action commenced in Civil Court of the City of New York (N.Y. Const, art. VI, sec. 3(b)(7);CPLR 5602(a).

Signed

Donald M. Sheraw

Clerk of the Court

COURT OF APPEALS OF THE STATE OF NEW YORK
ALBANY, NEW YORK

FRANK A. VESEY
Plaintiff-Appellant
- against -
MACY'S, HERALD SQUARE
Defendant-Respondent

Civil Court In.No:42513-85
County Clerk's No:92089-87

NOTICE OF MOTION FOR LEAVE TO APPEAL from Order No.M-4737, dated and filed Jan.5,1989 at a Term of the Appellate Division of the Supreme Court of New York, First Judicial Department, County of New York.

PLEASE TAKE NOTICE, THAT ON THE 17th day of July, 1989, at 9:30 o'clock in the forenoon, or as soon thereafter that he can be heard, the undersigned Plaintiff-Appellant will move this Court for a leave to appeal from an order of the Appellate Division, First Juducial Dpartment,County of New York, entered on January 5, 1989.

Plaintiff-Appellant's right for a trial by jury was denied by the lower Courts and thereby these Courts directly violated the viith Amendment of the Constitution of the United States.

Plaintiff-Appellant demands that the order of the lower Courts be set aside,

STATE OF NEW YORK COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the seventeenth day of October, A.D. 1989

PRESENT, Hon. Sol Wachtler, Chief Judge, presiding.

1-12 Mo. No. 870

Frank A. Vesey,

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Macy's, Herald Square,

Respondent

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Signed

Donald M. Sheraw

Clerk of the Court

COURT OF APPEALS OF THE STATE OF NEW YORK
ALBANY, NEW YORK

FRANK A. VESEY
Plaintiff-Appellant
- against -
MACY'S, HERALD SQUARE
Defendant-Respondent

Civil Court In.No:42513-85
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Plaintiff-Appellant's right for a trial by jury was denied by the lower Courts and thereby these Courts directly violated the viith Amendment of the Constitution of the United States.

Plaintiff-Appellant demands that the order of the lower Courts be set aside,

his action be replaced on the calendar of the Civil Court of New York, for a trial by Jury.

Dated New York, May 25, 1989.

(Rubber stamp:) RECEIVED 31, 1989, Court of Appeals. Amended and re-submitted June 29,1989 (signed) F.A.VESEY Signed

FRANK A. VESEY
Plaintiff-Appellant per Se

COURT OF APPEALS OF THE STATE OF NEW YORK
ALBANY, NEW YORK

FRANK A. VESEY
Plaintiff-Appellant
- against -
MACY'S, HERALD SQUARE
Defendant-Respondent

Civil Court Index No: 42513-85
County Clerk's No: 92089-87

AFFIDAVIT in support of Motion.

FRANK A. VESEY, of 715 Park Ave.,N.Y. N.Y. deposes and says, that

1. he is the Plaintiff-Appellant in the above captioned proceeding, acting in his own behalf;

2. he instituted the above proceeding, all matters clearly stated in his Indorsed Complaint;

3. it is evident on the face of records, that all the orders of the Courts below are in direct violation of the Constitution of the United States, therefore they must br set aside and proceeding of Plaintiff-Appellant replaced on the calendar of the Civil Court of New York for a trial by jury.

Certified by Notary Public 05-26-89

Signed
FRANK A. VESEY
Plaintiff-Appellant per Se

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on January 5, 1988 Filed Jan 5 1988

Present-Hon.Francis T. Murphy, Jos.P.Sullivan, David Ross, Bentley Kassal, Betty Weinberg Ellerin, Justices.

Frank A. Vesey

Plaintiff-Appellant

-against-

Macy's Herald square M-4737

Defedant-Respondent

The above-named Plaintiff-Appellant having moved this Court for leave to appeal to this Court from an order of the Appellate Term of the Supreme Court, First Dept., entered on October 16, 1987, and for other related relief,

Now, upon reading and filing the pap-

ers with respect to said motion, and due deliberation having been had thereon,

it is ordered that said motion be and the same hereby is denied, in its entirety, with $20 costs.

Enter:

Signature

Clerk

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

FRANK A. VESEY — Plaintiff

Index No: 42513-85

-against-

MACY'S, HERALD SQUARE — Defendant

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that the above named plaintiff hereby appeals from the order of Civil Court Judge Leonard N. Cohen, issued on the 21st day of August, 1986 and entered in the above entitled action, filed in the Office of the Clerk of the County of New York on the 25th day of August, 1986 and from each and every part of said Order.

Dated New York, N.Y., September 24, 1986.

Yours, etc.

Signature

FRANK A. VESEY
Plaintiff per Se

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: SPECIAL TERM, PART I.

FRANK A. VESEY :
Plaintiff, : Index No.
-against- : 42513-85
MACY'S, HERALD SQUARE : FILED
Defendant. : August 25,1985
New York County
CIVILCOURT

COHEN, LEONARD N. J.,

Defendant moves to dismiss this complaint on the ground that it fails to show a cause for action. Plaintiff sues to recover $12,268.40 as the "difference between sale price and regular price" of rugs he purchased from Macy's but then cancelled when timely delivery could not be made. It is undisputed that defendany refused all of plaintiff's payment when the order was cancelled. Plaintiff also seeks interest on the money he paid defedant for the period of time prior to the refund.

Plaintiff pro se relies upon UCC.par. 2-713 which states that if a seller breaches the contract, the buyer at his option may recover as damages the difference between the sales price and the market price. Apparently, the rugs sought to be purchased were on sale

for $8,133.75 reduced by a total of $12,000. Plaintiff now seeks to recover the difference between the original pre-sale price and the reduced price. It is undisputed that plaintiff replaced the rugs for a sum less than the sale price at Macy's.

Plaintiff has misapplied the U.C.C. statute upon which he relies. The statute does not permit the original price of goods which have been reduced on sale and then not delivered. The buyer is entitled to the value of the goods. In this case the value, whether market price or the sale price is the same, it is the price plaintiff paid for the rugs. This is not a situation where the value of the goods varies. The pupose of the U.C.C. is to make whole the buyer when the seller breaches. This was clearly done by return of the entire sales price.

It is also clear that the plaintiff having chose to "cover" under U.C.C. par. 2-712 with other rugs which were reasonable substitutes for the ones purchased at Macy's, he may not now elect to sue under U.C.C.2-713.

Factually, it is also true that defendant returned plaintiff's money prior to the expiration of the delivery period. Even GBL 396 U 2b (a and b) does not provide the remedy plaintiff herein seeks.

Accordingly, the defendant's motion to dismiss is granted.

(Handwritten and poorly legible):
Defendant is directed .....
..... plaintiff fortwith.

Dated: 8-21-86, 1986

Signature

J.C.C.

At an Appellate Term of the Supreme Court, First Department, held at the Court House, Borough of Manhattan, City of New York, on the 21st day of July, 1988.

PRESENT: HON. JAWN A. SANDIFER, J.P.
HON. STANLEY S. OSTRAU,
Justices

FRANK A. VESEY : ORDER UPON MOTION
Plaintiff-Appellant 92089/1987
-against- : Cal. No. 87-156
MACY'S, HERALD SQUARE April 1987 Term
Defendant-Respondent:

The above named appellant having by notice of motion dated the 1st day of June 1988 moved for an order granting leave to appeal to the Appellate Division-First Dept. from an order of this Court dated October 16, 1987,

Now upon reading and filing said notice of motion and the affidavit of Frank A.

Vesey verified on the 1st day of June 1988 in favor of said motion, and the papers of Herbert M. Hellman dated on the 15th day of June 1988 and the papers annexed in opposition thereto,

IT IS ORDERED that said motion be and the szme hereby is denied with $10 costs.

Enter,

FILED
JUL 21 1988
N.Y.CO.CLERK'S
OFFICE

Initial

Justice, Appellate Term,
Supreme Court, first dept.

CIVIL COURT OF THE CITY OF N.Y.
COUNTY OF NEW YORK

Index No.
42513-85

FRANK A. VESEY : Plaintiff's resid.
Plaintiff : address: 715 Park
-against- : Ave.,N.Y.,N.Y.10021
MACY'S, HERALD SQUARE : Tel:(212)628-6563
Defendant : NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned Plaintiff will move this Court at Special Term Part I, 111 Centre Street, N.Y.,N.Y.10013 on the 7th day of August, 1985, at 9:30 o'cl. in the forenoon, or as soon thereafter that Plaintiff can be heard, for permission to trial by jury in the above captioned action.

Dated New York, N.Y.
July 17, 1985

Signature
FRANK A. VESEY
Plaintiff

To: Name and address of attorney of Defendant.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

FRANK A. VESEY	:	Index No.42513-85
Plaintiff	:	Plaintiff's residence
-against-	;	etc.
MACY'S, HERALD SQUARE	;	AFFIDAVIT
Defendant	;	IN SUPPORT OF MOTION

FRANK A. VESEY, AFTER DULY SWORN, deposes and says, that

1. he is the Plaintiff in the above captioned action
2. Defendant answered the Indorsed Complaint on July 10, 1985
3. Plaintiff feels that the only way he can have a fair trial in the above captioned action is by a trial by Jury of his Peers
4. therefore with due respect to the Court he, the Plaintiff, demands a trial by Jury and beseeches the Court for permission of same.

STATE OF NEW YORK SS: Signature
COUNTY OF NEW YORK FRANK A. VESEY
SWORN TO BEFORE ME
on this 17th day of July, 1985

SIGNATURE AND STAMP OF NOTARY PUBLIC

CIVIL COURT OF THE CITY OF N.Y.

COUNTY OF NEW YORK: SPECIAL TERM, PART I.

Index No. 42315-85

Motion Cal. No. P-17 8/7/85

Frank A. Vesey :
Plaintiff :
against :
Macy's Herald Square :
Defendant :

Present:
Hon. Margaret Taylor
Judge

The following papers on this motion to permit a trial by JURY submitted on this 7th day of August, 1985.

Upon Plaintiff's Notice of Motion and Affidavit in support of said motion for permission to try this action , it is hereby

ORDERED, that upon conclusion of all motion practice and disclosure in the above entitled action and upon the proper filing and service of a notice of trial and upon notice to counsel for both parties, that this case be permitted to be tried by jury.

Initialed

Dated 8/7/85 J.C.C.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

FRANK A. VESEY	:	Index No.42513-85
Plaintiff	:	SUMMONS
against	:	Plaintiff's residence
MACY'S, HERALD SQUARE	:	Address: 715 Park Ave.
New York, N.Y. 10001	:	New York,N.Y.10021
Defendant	:	The basis of the venue designated is: Place of occurance

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of New York at the office of the Clerk of the said Court at 111 Centre Street, in the County of New York, City and State of New York, within the time provided by law as noted below and file your answer to the complaint with the Clerk: upon your failure to answer, judgement will be taken against you for the sum of $12,268.40 with interest thereon from the 18th day of February, 1985 together with costs of this action.

Dated June 19, 1985

Defendant's address:
Herald Square
New York,N.Y.10001
Executive Office

FRANK A. VESEY
Plaintiff(s) per Se
Post Office Address and Telephone No:
715 Park Ave.,New York,N.
10021. Tel:(212)628-6563

NOTE: The law provides that: (a) If this summons is served by its delivery to you perso-

nally within the City of New York, you must appear and answer within TWENTY days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or it is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

INDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows: Action in the sum of 12,268.40 Dollars, the loss sustained by Plaintiff due to the failure of Defendant to deliver merchandise purchased and fully paid for on 02-18-85 and promised to be delivered between 02-18 and 04-18,1985.Defendant kept Plaintiff's money on Defendant's accounts for 2 months and refused to reimburse Plaintiff for inrest lost during this time. Defendant is also responsible to pay the difference between the sale price and the regular price of the merchandise, posted on the sales tags of the merchandise purchased. The interest on the money paid by Plaintiff, $8,133.75 at the rate charged by Defendant to customers amounts to $268.40. Tje difference between sale

price and regular price amounts to $12,000.- This demand for reimbursement and compensation was made by Plaintiff several times over the telephone and by correspondence and was flatly denied by Defendant.

Therefore Plaintiff beseeches the Court that judgement be rendered against Defendant for the sum demanded by Plaintiff, together with disbursements and costs of this action, plus the interest from 02-18-85.

Signature
FRANK A. VESEY
Plaintiff in Person

APPELLATE TERM OF THE SUPREME COURT
FIRST DEPARTMENT APRIL 1987

PRESENT: HON. THOMAS J. HUGHES, P.J.
HON. JAMES A. SANDIFER
HON. STANLEY S. OSTRAU
Justices

FRANK A. VESEY ; #87-156
Plaintiff-Appellant ;
-against- ;
MACY'S, HERALD SQUARE ;
Defemdant-Respondent

Plaintiff appeals from an order of the Civil Court, New York County (Cohen, J.) entered August 25, 1986, granting defendant's

motion to dismiss the complaint for failure to state a cause of action.

PER CURIAM:

Order entered August 25, 1986 (Cohen, J.) affirmed with $10 costs.

I concur initial

I concur initial

I concur